The Lautenberg Amendment

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"Domestic violence is incompatible with military service and contrary to our core values"

-MARADMIN

186/03

LAUTENBERG AMENDMENT

Overview

- The Gun Control Act of 1968
  - – Denied Felons ability to possess firearms
  - – Public Interest Exception
    - Exempted state and federal employees
    - Duty related possession only
- The 1994 Amendment

  -Protective orders – notice and court finding requirements

Overview cont'd

- The Lautenberg Amendment - 1996
  - Amended the Gun Control Act of 1968
  - Makes it a felony for anyone
    - convicted of a "misdemeanor crime of domestic violence" to ship, receive, or possess firearms or ammunition
    - for anyone to provide firearms/ammunition to someone known to have a conviction for domestic violence
  - Revoked the public interest exception to Gun Control Act

Purpose of Amendment

- To get and keep firearms out of the hands of those individuals with domestic violence convictions.

"All too often the difference between a battered woman and a dead woman is the presence of a gun." – Sen. Frank Lautenberg

No Military Exception

- There is no military or law enforcement exception to the Lautenberg Amendment or Gun Control Act
- Not an oversight
- Retroactive application (no grandfather clause)

18 U.S.C. §922(d)(9)

- It shall be unlawful for <u>any</u> person
  - to sell or otherwise dispose of any firearm or ammunition to any person, knowing or having reasonable cause to believe that such person has been convicted in any court of a misdemeanor crime of domestic violence.

18 U.S.C. §922(g)(9)

- It shall be unlawful for any person
  - who has been convicted in any court of a misdemeanor crime of domestic violence,
  - to ship, transport, or possess any firearm or ammunition;
  - or to receive any firearm or ammunition

18 U.S.C. §921(a)(33)

- Misdemeanor crime of domestic violence means an offense that--
  - is a misdemeanor under Federal or State law; and
  - has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon
  - against the “domestic victim”

What is a Misdemeanor?

- Defined by Federal or State Law
  - UCMJ offenses are not classified as misdemeanor or felony
  - Courts-martial are NOT classified as misdemeanor or felony

What is a “Conviction” ?

- Determined by State or Federal law
- “Nolo Contendere” pleas
  - same effect as a plea of guilty for sentencing but may not be considered as an admission of guilt for any other purpose.
- Does NOT include deferred prosecutions or similar alternative dispositions.
- Does NOT include NJP or Summary Court-Martial
- Does NOT include CRC findings

Offender/Victim relationship

- **Domestic violence occurs when the offender is:**
  - the current spouse of the victim
  - the former spouse of the victim
  - the parent of the victim
  - the guardian of the victim
  - shares a common child with the victim
  - someone who is cohabitating as a spouse, parent, or guardian
  - someone who used to cohabitate as a spouse, parent or guardian
  - Someone similarly situated has a spouse, parent, or guardian of the victim

Bottom Line

- Anyone who commits a misdemeanor crime:
  - That involves "Domestic Violence"
  - And is subsequently convicted of this crime
  - Whether recently or in the past (no grandfather clause)
- Cannot own, possess, or be issued weapons/ammunition
  - even in the line of duty!
- *Expunged or set aside convictions

DoD Policy

- Current policy approved and effective on 27 Nov 02
- Policy applies to felony* and misdemeanor crimes of domestic violence, and general and special courts-martial that otherwise meet the definition of “crime of domestic violence.”
- Two separate memorandums (civilian and military)
- DoD Directive/Instruction in process

DoD Policy (generally)

- Must periodically inform personnel of amendment, consequences, and DoD policy.
- Actions and policy applies OCONUS
- Military and civilian personnel have an “affirmative, continuing obligation” to notify command/supervisor of qualifying conviction.
  - That they currently have or later obtain - requires use of DD Form 2760

DoD Policy for Military

- Qualifying conviction bars applicants from military service and for current members:
- Requires retrieval and suspension of access to firearms and ammunition
- If qualifying conviction is learned while deployed, continue mission. Once off deployment weapon/ammo access prohibited.

- Major weapons systems are excluded from the definition of firearms and ammunition (tanks, crew-served weapons, aircraft, etc.)

DoD Policy for “Covered” Employees

- Requires Services to identify all “covered” civilian employees
  - positions that include duties under Gun Control Act, including selling, disposing, receiving, possessing, shipping or transporting firearms and ammunition.
  - Requires use of DD Form 2760
- Personnel with qualifying conviction cannot be assigned or detailed to covered position.

Exclusions

- Summary Courts-Martial
- NJP
- Administrative separations
- Deferred prosecutions or similar alternative dispositions
- **CRC Findings***

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- Marines/Sailors have an affirmative, continuing duty to notify commanders of qualifying convictions (DD Form 2760)
- TECOM directed to modify common skills order and ITS order
- Recruiting command will screen all enlisted and officer applicants for qualifying conviction

Commander's Responsibilities

- Once Commanders know or suspect that a member has a qualifying conviction:
  - Provide DD Form 2760
  - Immediately retrieve Government issued firearms/ammunition
  - Suspend future access to Government firearms/ammunition
  - Secure access to privately owned firearms/ammunition kept on base
  - Advise member to take immediate action to lawfully dispose of the same
  - Refer member to SJA
- Commanders:
  - May process member for administrative separation
  - Shall not routinely screen for DV convictions
  - Of deployed units shall take appropriate actions upon return from deployment

Additional USMC policy

- Commander's shall continue to take appropriate measures . . to protect spouses

  and children from domestic violence
- Applies to Reserves

Armed Forces Domestic Security Act

- 10 USC 1561a – enacted 2 Dec 02
- Gives civilian protection orders full force and effect on military installations
- “Protection Orders” include temporary an final orders issued by civilian or criminal courts.

DoD Implementation

- DoD memo of 10 Nov 03 implemented this Act
- Violators of civilian protective orders risk civilian and/or military adverse action
- Commanders shall take all reasonable measures necessary to ensure orders are given full force and effect
- Commanders may issue MPO that is more restrictive

When in doubt
contact your SJA

Questions?

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